

ENTERED

December 17, 2020

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

FEDERICO JUAREZ,

Petitioner,

VS.

LORIE DAVIS,

Respondent.

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CIVIL ACTION NO. 2:20-CV-24

ORDER ADOPTING MEMORANDUM AND RECOMMENDATION

Petitioner Federico Juarez challenges his no-contest plea to aggravated sexual assault of a child through a petition for a writ of habeas corpus under 28 U.S.C. § 2254. D.E. 1. Respondent filed a motion for summary judgment contending that the statute of limitation bars Juarez's claims, he failed to exhaust his state remedies, and his claims should be denied on the merits. D.E. 22. United States Magistrate Judge Julie K. Hampton issued a Memorandum and Recommendation (M&R), recommending that the Court grant Respondent's motion, dismiss the petition as untimely, and deny a certificate of appealability. D.E. 24. Pending before this Court are Juarez's objections. D.E. 31. For the following reasons, the Court OVERRULES the objections and ADOPTS the findings and conclusions of the Magistrate Judge.

BACKGROUND

Juarez was convicted by a jury of aggravated sexual assault of a child in Texas state court. D.E. 21-4 p. 1-3. After trial, new counsel filed a motion for new trial (D.E. 21-4 p. 6-7) and a notice of appeal (D.E. 21-4 p. 4). The trial court granted a new trial (D.E. 21-4 p. 8-9), mooted the appeal (D.E. 21-2 p. 6-7). Juarez then pled no contest to

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aggravated sexual assault of a child and was sentenced to 11 years' imprisonment. D.E. 21-4 p. 10–11, 14–17. The judgment was entered on January 28, 2015. D.E. 21-4 p. 10–11, 20–21. On January 13, 2020, Juarez filed his §2254 petition, arguing the following:

- (1) violations of his Fourth, Fifth, Sixth, and Fourteenth Amendment rights because he was forced into accepting his plea and because of the conditions surrounding the first trial;
- (2) ineffective assistance of counsel in violation of his Fifth and Sixth Amendment rights because counsel failed to assert a double jeopardy defense, failed to file a motion to quash the indictment, and failed to request a directed verdict;
- (3) the state withheld evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963); and
- (4) the state failed to fulfill its end of the plea agreement because he was supposed to be exempt from the sex offender registration requirements.

D.E. 1 p. 6-7.

DISCUSSION

Standard. The district court conducts a de novo review of any part of the magistrate judge's disposition that has been properly objected to. 28 U.S.C. § 636(b)(1)(C); FED. R. CIV. P. 72(b)(3); *Warren v. Miles*, 230 F.3d 688, 694 (5th Cir. 2000). As to any portion for which no objection is filed, a district court reviews for clearly erroneous factual findings and conclusions of law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989) (per curiam).

The Magistrate Judge's Decision. The Magistrate Judge found that the statute of limitations bars Juarez's claims because he failed to file his petition within one year of the judgment becoming final. D.E. 24, p. 6. The Magistrate Judge further found that Juarez is not entitled to statutory tolling because he did not file a state habeas application,

and he is not entitled to equitable tolling because he failed to demonstrate any extraordinary circumstances. Juarez did not object to these specific findings in the M&R. After careful review, the Court finds that the Magistrate Judge's findings are not clearly erroneous. This action is barred by limitations.

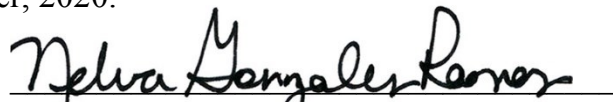
Juarez's Objections. Juarez's objections simply restate the arguments he presented in his petition regarding the merits of his claims—matters the Magistrate Judge did not reach because of the limitations bar. The Court **OVERRULES** Juarez's objections as moot.

Certificate of Appealability. Juarez requests a certificate of appealability, but the Court agrees with the Magistrate Judge that he has not made the requisite showing for the issuance of such a certificate. The Court therefore **DENIES** the request for a certificate of appealability.

CONCLUSION

Having reviewed the findings of fact, conclusions of law, and recommendations set forth in the M&R, Juarez's objections, and all other relevant documents in the record, the Court **OVERRULES** Juarez's objections and **ADOPTS** as its own the findings and conclusions of the Magistrate Judge. Accordingly, the Court **GRANTS** Respondent's motion for summary judgment (D.E. 22) and **DISMISSES** Juarez's petition. The Court **DENIES** Juarez's request for a certificate of appealability.

ORDERED this 17th day of December, 2020.


NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE